

## 48A C.J.S. Judges § 199

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### B. Amount

#### 2. Change in Amount During Term of Office

##### b. Restrictions Against Altering Compensation During Term

## § 199. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(7)

**Under some constitutional and statutory provisions, the compensation of judges cannot be changed during their term of office, either directly or indirectly.**

Some constitutional<sup>1</sup> or statutory<sup>2</sup> provisions preclude a change in the compensation of judicial officers either after their election or appointment or during their term of office. Under such provisions, compensation of judges cannot be changed during their term of office,<sup>3</sup> either by increasing<sup>4</sup> or diminishing<sup>5</sup> it, whether the selection of the judge is by appointment or election<sup>6</sup> and regardless of the manner in which the judge is paid.<sup>7</sup> The purpose of a provision barring the diminution of compensation is to secure the independence of the judiciary<sup>8</sup> while the purpose of a provision prohibiting the increase of a judge's compensation is to remove the temptation to favor persons procuring a legislative increase of salary for such judge.<sup>9</sup> The Compensation Clause of the Federal Constitution providing that judges' salaries shall not be diminished during their continuance in office<sup>10</sup> is to be liberally applied because it is not a private grant or privilege but a limitation intended to benefit the public at large.<sup>11</sup> The legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all government salaries.<sup>12</sup>

While it has been held that a statutory provision attempting in contravention of the constitution to reduce the salary of judges during their term is absolutely invalid rather than merely inoperative,<sup>13</sup> a resolution of a local board purportedly changing the compensation of a judge during the term of the incumbent has been held not void but merely ineffective until the incumbent's term ends, and a new term begins.<sup>14</sup> A statute providing that the salary of a justice shall not be increased or diminished during

a term of office except that such salary may be fixed by local authority within a specified time after the adoption of the statute authorizes an increase within the specified time after the act takes effect<sup>15</sup> but not thereafter.<sup>16</sup>

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#### Footnotes

- 1 La.—*Redwine v. State*, 649 So. 2d 61 (La. Ct. App. 1st Cir. 1994), as amended on reh'g, (Feb. 2, 1995).
- 2 Ga.—*First Nat. Bank of Atlanta v. Mann*, 211 Ga. 706, 88 S.E.2d 361 (1955).  
La.—*State ex rel. Guste v. City of New Orleans*, 363 So. 2d 678 (La. 1978).
- 3 Ariz.—*Smith v. City of Phoenix*, 175 Ariz. 509, 858 P.2d 654 (Ct. App. Div. 1 1992).
- 4 Tenn.—*State ex rel. Barker v. Harmon*, 882 S.W.2d 352 (Tenn. 1994).
- 5 Del.—*Lee v. State Bd. of Pension Trustees*, 739 A.2d 336 (Del. 1999).  
R.I.—*Pellegrino v. Rhode Island Ethics Com'n*, 788 A.2d 1119 (R.I. 2002).  
Tenn.—*State ex rel. Barker v. Harmon*, 882 S.W.2d 352 (Tenn. 1994).
- 6 Del.—*Lee v. State Bd. of Pension Trustees*, 739 A.2d 336 (Del. 1999).
- 7 Ala.—*Grayson v. Stone*, 259 Ala. 320, 66 So. 2d 438 (1953).  
Mo.—*State ex rel. Buchanan County v. Imel*, 280 Mo. 554, 219 S.W. 634 (1920).
- 8 U.S.—*U.S. v. Hatter*, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001); *McBryde v. Committee to Review Circuit Council Conduct and Disability Orders of Judicial Conference of U.S.*, 264 F.3d 52 (D.C. Cir. 2001).
- 9 Ill.—*People ex rel. McDavid v. Barrett*, 370 Ill. 478, 19 N.E.2d 356, 121 A.L.R. 1311 (1939).
- 10 U.S. Const. Art. III, § 1.  
**Selection of methods**  
Compensation Clause of United States Constitution, which prohibits diminishment of judge's salary during his continuance in office, was not concerned with method selected by Congress for determining judicial compensation, but rather, its concern was that once method was selected it not be altered to diminish compensation to which judges were entitled.  
*U.S.—Will v. U.S.*, 478 F. Supp. 621 (N.D. Ill. 1979), aff'd in part, rev'd in part on other grounds, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).
- 11 U.S.—*Evans v. Gore*, 253 U.S. 245, 40 S. Ct. 550, 64 L. Ed. 887, 11 A.L.R. 519 (1920) (overruled in part on other grounds by, *O'Malley v. Woodrough*, 307 U.S. 277, 59 S. Ct. 838, 83 L. Ed. 1289, 122 A.L.R. 1379 (1939)) and (overruled on other grounds by, *U.S. v. Hatter*, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001)).
- 12 U.S.—*U.S. v. Hatter*, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 13 Iowa—*Smith v. Thompson*, 219 Iowa 888, 258 N.W. 190 (1934) (overruled in part on other grounds by, *Carlton v. Grimes*, 237 Iowa 912, 23 N.W.2d 883 (1946)).

- 14 Wis.—*State ex rel. Sullivan v. Boos*, 23 Wis. 2d 98, 126 N.W.2d 579 (1964).
- W. Va.—*Henritze v. McDowell County Court*, 129 W. Va. 81, 39 S.E.2d 194 (1946).
- 15 N.Y.—*Bass v. Board of Trustees of Village of Northville*, 226 A.D. 165, 235 N.Y.S. 250 (3d Dep't 1929).
- 16 N.Y.—*Bass v. Board of Trustees of Village of Northville*, 226 A.D. 165, 235 N.Y.S. 250 (3d Dep't 1929).

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